

§§ 272.1602–272.1649 [Reserved]

Subpart HH—New York

§ 272.1650 [Reserved]

§ 272.1651 New York State-Administered Program: Final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), New York has final authorization for the following elements as submitted to EPA in New York's base program application for final authorization which was approved by EPA effective on May 29, 1986. Subsequent program revision applications were approved effective on July 3, 1989, May 7, 1990, October 29, 1991, May 22, 1992, August 28, 1995, October 14, 1997, January 15, 2002, March 14, 2005, and August 31, 2009. (NOTE: Both the Federal and State requirements for the NY State Public Utilities Project XL, which were authorized effective August 31, 2009, will, unless extended, expire on May 24, 2011.)

(b) The State of New York has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State statutes and regulations.* (1) The New York regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* The Director of Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the New York regulations that are incorporated by reference in this paragraph from West Group, 610 Opperman Drive, Eagan, MN 55123, *Attention:* D3-10 (Phone #: 1-800-328-9352). You may inspect a copy at EPA Region 2 Library, 290 Broadway, 16th Floor, New York, NY 10007 (Phone number: (212) 637-3185), or at the National Archives and Records Adminis-

tration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(i) The Binder entitled “EPA Approved New York Regulatory Requirements Applicable to the Hazardous Waste Management Program”, dated July 2009.

(ii) [Reserved]

(2) EPA considered the following statutes and regulations in evaluating the State program but is not incorporating them herein for enforcement purposes:

(i) Environmental Conservation Laws (ECL), 1997 Replacement Volume, as revised by the 2004 Cumulative Pocket Part: sections 1-0303(18), 3-0301(1) (introductory paragraph); 3-0301(1)(a) and (b); 3-0301(1)(m); 3-0301(1)(o); 3-0301(1)(w); 3-0301(1)(x); 3-0301(1)(cc); 3-0301(2) introductory paragraph; 3-0301(2)(a), (b), (d) through (j), (l), (m) and (q); 3-0301(2)(z); 3-0301(4); 19-0301(1) (except 19-0301(c), (e) and (f)); 19-0303(1) through (3); 19-0304; 27-0105; 27-0701; 27-0703; 27-0705; 27-0707 (except 27-0707(2-c)); 27-0711; 27-0900 through 27-0908; 27-0909 (except 27-0909(5)); 27-0910 through 27-0922; 27-1105; 70-0101; 70-0103; 70-0105 (except 70-0105(3) and 70-0105(6)); 70-0107(1) and (2); 70-0107(3) introductory paragraph; 70-0107(3)(l); 70-0109; 70-0113; 70-0115 (except (2)(c) and (d)); 70-0117 (except 70-0117(5)–(7); 70-0119; 70-0121; 71-0301; 71-1719; 71-2705; 71-2707; 71-2709 through 71-2715; 71-2717; 71-2720; and 71-2727.

(ii) [Reserved]

(iii) McKinney's Consolidated Laws of New York, Book 1, Executive Law (EL), Article 6: Section 102.

(iv) McKinney's Consolidated Laws of New York, Book 46, Public Officers Law (POL), as amended through 2004: Sections 87 and 89.

(v) McKinney's Consolidated Laws of New York, Book 7B, Civil Practice Law and Rules (CPLR), as amended through 2004: Sections 1013, 6301; 6311; and 6313.

(vi) Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A-2A, Hazardous Waste Management System, as amended through September 5, 2006: Sections 372.1(f); 373-1.1(f) and (g); 373-1.4(b); 373-1.4(d) through (f); 373-1.6(c); 621.1 through

621.4; 621.5 (except (d)(5), (d)(6)(i), (d)(7)(i)(a), (d)(7)(i)(c) and (d)(9)); 621.6 (except (b), (d)(4) and (d)(5)); 621.7; 621.8; 621.9 (except (a)(5), (c)(2) and (e)(2)); 621.10; 621.11 (except (d)); 621.12 through 621.15; and 621.16 (except (b), (d) and (e)).

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, are not incorporated by reference and are not federally enforceable:

(i) Environmental Conservation Laws (ECL), 1997 Replacement Volume, as revised by the 2004 Cumulative Pocket Part: Sections 27–0301; 27–0303; 27–0305; 27–0307; 27–0909(5); 27–0923; 27–0925 and 27–0926.

(ii) Environmental Conservation Laws (ECL), 1997 Replacement Volume, as revised by the 2006 Cumulative Pocket Part: Section 27–1109(6).

(iii) Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A–2A, Hazardous Waste Management System, as amended through September 5, 2006: Sections 370.2(b)(92) “Household hazardous waste”; 370.2(b)(93) “Household collection facility”; 371.4(e); 372.1(e)(9); 372.2(b)(5)(ii); 372.3(a)(1); 372.3(a)(4); 372.3(b)(6)(iv); 372.3(d)(3); 373–1.1(d)(1)(x); 373–1.4(c); 373–2.5(b)(3)(ii)(d); 373–2.5(b)(3)(ii)(e); 373–2.15(a)(2); 373–3.5(b)(3)(ii)(d); 373–3.5(b)(3)(ii)(e); 374–3.4(a)(2); and 376.4(f).

(iv) At 371.4(c), New York retains K064, K065, K066, K090 and K091 as hazardous wastes while EPA has removed them from the table at 40 CFR 261.32 and no longer regulates them as hazardous wastes (64 FR 56469; October 20, 1999).

(v) Throughout New York’s hazardous waste regulations, the State cross-references Part 364, which sets forth additional transporter requirements including permit and liability requirements (for examples, see 6 NYCRR sections 372.2(b)(8), 373–1.7(h)(3), 374–3.3(i)(1) and (2), 374–3.4(a), 374–3.6(a)(1) and Appendix 30 Instructions for Generators/Item 8). The transporter permit and liability requirements are broader in scope than the Federal program.

(vi) New York did not adopt an analog to 40 CFR 261.4(g) that excludes certain dredged materials from the State

definition of hazardous waste. Instead, the State subjects these materials to full regulation as hazardous wastes.

(vii) New York State regulations do not incorporate the Mineral Processing Secondary Materials Exclusion at 40 CFR 261.4(a)(17) and the related changes affecting 40 CFR 261.2(c)(3) and (c)(4)/Table, and 40 CFR 261.2(e)(1)(iii). Since New York did not adopt the exclusion at 40 CFR 261.4(a)(17) the State has a broader in scope program because the effect is to include materials that are not considered solid waste by EPA.

(viii) At 373–4, New York implements a Household Hazardous Waste program, whereas the Federal program excludes household waste from regulation as hazardous waste at 261.4(b)(1).

(ix) The following New York provisions are broader in scope because they include requirements associated with the regulation of PCB waste as a state-only hazardous waste: 372.1(e)(9) and 376.1(g)(1)(i), 376.4(f). PCB wastes are regulated under the Federal Toxic Substances Control Act (TSCA) at 40 CFR part 761 rather than under the Federal RCRA program.

(4) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 2 and the State of New York, signed by the Commissioner of the State of New York Department of Environmental Conservation on July 20, 2001, and by the EPA Regional Administrator on January 16, 2002, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(5) *Statement of Legal Authority.* “Attorney General’s Statement for Final Authorization”, signed by the Attorney General of New York in 1985 and revisions, supplements and addenda to that Statement dated August 18, 1988, July 26, 1989, August 15, 1991, October 11, 1991, July 28, 1994, May 30, 1997, February 5, 2001, April 2, 2004 and June 13, 2008 (including three certifications), although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Program Description.* The Program Description and any other materials

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submitted as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

[75 FR 45492, Aug. 3, 2010]

§§ 272.1652–272.1699 [Reserved]

Subpart II—North Carolina

§§ 272.1700–272.1749 [Reserved]

Subpart JJ—North Dakota

§ 272.1750 [Reserved]

§ 272.1751 North Dakota State-administered program: Final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), North Dakota has final authorization for the following elements as submitted to EPA in North Dakota's base program application for final authorization which was approved by EPA effective on October 19, 1984. Subsequent program revision applications were approved effective on August 24, 1990, July 6, 1992, June 6, 1994, March 20, 2000, November 25, 2005, and April 14, 2008.

(b) The State of North Dakota has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.* (1) The North Dakota statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921, *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the North Dakota statutes that are incorporated by reference from the Matthew Bender & Company Inc., P. O. Box 7587,

Charlottesville, VA, 22906-7587, phone number: (800) 833-9844. You may obtain copies of the North Dakota regulations that are incorporated by reference in this paragraph from the North Dakota Legislative Counsel, Second Floor, State Capitol, 600 E Boulevard, Bismarck ND 58505, phone: (701) 328-2916. You may inspect a copy at EPA Region 8, from 7 a.m. to 4 p.m., 1595 Wynkoop Street, Denver, CO, 80202, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(i) The Binder entitled “EPA Approved North Dakota Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program”, dated July 2006.

(ii) [Reserved]

(2) EPA considered the following statutes and regulations in evaluating the State program but is not incorporating them herein for enforcement purposes:

(i) North Dakota Century Code, 1998 Replacement, Volume 13A, North Dakota Constitution, Article XI: Sections 5 and 6.

(ii) North Dakota Century Code, 2002 Replacement, Volume 4A, Chapter 23-01 “Department of Health” Section 23-01-04.1, (except (6)).

(iii) North Dakota Century Code, Volume 4A, 2002 Replacement, as amended by the 2005 Pocket Supplement. Chapter 23-20.3 “Hazardous Waste”: Sections 23-20.3-01, (except (5) and (6)); 23-20.3-02, (except (1), (9), (11), (12), and (17)); 23-20.3-03; 23-20.3-04; 23-20.3-05(3), (5), (6), and (8); 23-20.3-06; 23-20.3-07; 23-20.3-08; 23-20.3-09; and 23-20.3-10.

(iv) North Dakota Century Code, Volume 4A, 2002 Replacement. Chapter 23-29 “Solid Waste Management”: Section 23-29-04.

(v) North Dakota Century Code, Volume 5, 1991 Replacement. Chapter 28-32 “Administrative Agencies Practice Act”: Section 28-32-21.1.

(vi) North Dakota Century Code, Volume 6, 1996 Replacement. Chapter 32-40 “Environmental Law Enforcement”: Sections 32-40-03; 32-40-04; 32-40-05; 32-